

CALIFORNIA COASTAL COMMISSION

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**TU 13a**

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Staff:	AJP-LB
Staff Report:	2/14/06
Hearing Date:	3/7-10/06

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-05-395

APPLICANT: Los Angeles County Beaches and Harbors

PROJECT LOCATION: 13970 Panay Way, Marina del Rey

PROJECT DESCRIPTION: Construction of a concrete outlet, measuring approximately 4 feet by 6 feet and designed for a 30-inch drainline and built into the existing rip-rap portion of the bulkhead in Basin C, south of Panay Way, to drain redirected local storm water runoff from adjacent Basin D.

LOCAL APPROVALS RECEIVED: County Regional Planning Approval in Concept

SUBSTANTIVE FILE DOCUMENTS: County of Los Angeles' Marina del Rey certified LCP.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission grant a permit for the proposed development with conditions regarding: 1) construction responsibilities and debris removal; 2) location of debris disposal site; 3) timing of project; 4) survey for eelgrass; 5) survey for caulerpa; 6) U.S. Army Corps of Engineers final approval; and 7) assumption of risk for County of Los Angeles. As conditioned, the proposed development conforms with all Chapter three policies of the Coastal Act.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application:

MOTION: I move that the Commission approve coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a YES vote. Passage of this motion will result in approval of all permits included on the consent calendar. An affirmative vote of a majority of the Commissioners present is needed to pass the motion.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a permit, subject to the conditions below, for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/ or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternative that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. **SPECIAL CONDITIONS**

1. **CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL**

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to inundation or dispersion in the waters of the marina;
- (b) Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction;
- (c) No machinery or construction materials not essential for project improvements shall be allowed at any time in the intertidal zone;
- (d) If turbid conditions are generated during construction, a silt curtain shall be utilized to control turbidity;
- (e) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- (f) Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss; and
- (g) Reasonable and prudent measures shall be taken to prevent all discharge of fuel or oily waste from heavy machinery, pile drivers or construction equipment or power tools into the waters of the Marina del Rey. The applicant and the applicant's contractors shall have adequate equipment available to contain any such spill immediately.
- (h) The applicant shall inspect the site at the end of construction, or if construction is ongoing, at reasonable intervals, not less than every 90 days, to verify that debris, flotsam, and hazards to navigation have not been deposited in coastal waters, and shall maintain records of such inspections.

2. **LOCATION OF DEBRIS DISPOSAL SITE**

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

3. **TIMING OF PROJECT**

In order to reduce impacts on the California least tern during nesting and foraging season, no construction activity which may generate noise or turbidity in the water

column shall occur during the period commencing April 1 and ending September 15 of any year.

4. PRE-CONSTRUCTION EELGRASS SURVEY

A. Pre Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

B. Post Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicants shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicants shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Any off-site mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

5. CAULERPA TAXIFOLIA PRE-CONSTRUCTION SURVEY

A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.

B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine

Fisheries Service.

C. Within five (5) business days of completion of the survey, the applicant shall submit the survey:

1. for the review and approval of the Executive Director; and
2. to the Surveillance Subcommittee to the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043).

D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and/or buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. U.S. ARMY CORPS OF ENGINEERS APPROVAL

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director a copy of the final permit issued by U.S. Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

7. ASSUMPTION-OF-RISK, WAIVER OF LIABILITY, AND INDEMNITY DEED RESTRICTION.

A. By acceptance of this permit, the applicant Los Angeles County Department of Beaches and Harbors acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) to include a provision in any subsequent lease of such property requiring the lessee to submit a written

agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the terms of subsection A of the prior condition.

B. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT, the landowner shall execute and record against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the landowner shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant proposes the construction of a storm drain outlet along the face of the existing bulkhead in Basin C, which is located south of Panay Way, to drain redirected local storm water run off from Basin D, located immediately north of Panay Way. The concrete outlet will measure approximately 4 feet by 6 feet and designed for a 30-inch drainline and built into the existing rip-rap portion the bulkhead. The drain outlet will be located approximately four feet below mean sea level to drain a new, yet to be constructed, storm drain line on the landside portion of the marina. The existing marina bulkhead consists of a vertical 7-foot high concrete seawall, as measured from mean sea level, above 3-foot wide rip-rap that extends approximately 10 below mean sea level. Construction will include construction of a cofferdam and use of a silt curtain to minimize turbidity. Construction equipment will be placed on the landward side of the bulkhead.

The marina bottom consists of mud at the toe of the existing rip-rap. All work will be done above the marina bottom and will generally not disturb the marina floor. However, the construction of a cofferdam to keep water out of the area of the proposed outlet during construction may cause disturbance of the marina floor. Therefore, this permit has been conditioned to require surveys for the presence of eel grass and caulerpa.

Basin C is located in the northwestern portion of the marina between the mole roads of Panay Way to the north, and Marquesas Way to the south. Marina Beach (also known as Mother's Beach), located in Basin D, is a man made sand beach with a shallow profile at the upper end of Basin D. The beach has a children's swim area, playground, picnic area and restrooms. Facilities for kayaks, canoes, and small sailboats are also provided. Basin D is the only area within the marina where human water contact is allowed.

According to the County, the purpose of the outlet is to improve chronic bacterial contamination at Marina Beach located in Basin D. The proposed project is part of a two-part approach to address the water quality problems within Basin D. A new drain line (not part of this permit application) will be constructed and connected to the proposed outlet to redirect runoff from the adjacent hardscape areas, including public parking lots adjacent to Marina Beach. The second part involves installation of water circulators in Basin D, to improve water circulation problems in that basin [The Commission approved a coastal development permit for the circulators in March 2005 (CDP No. 5-04-200)].

Currently, the existing storm drain line drains seven catch basins/collectors from the adjacent parking lots and hardscape and directs the runoff into Basin D. This runoff drains untreated into Basin D. The runoff will be redirected along a new line that will drain to the proposed outlet at Basin C. According to the County, they will also implement treatment measures for the existing and any new catch basins/collectors to improve overall water quality. The County will include filters along all collectors/catch basins to filter out petroleum products and other pollutants, and will continue other best management practices including sweeping and cleaning the parking lot to remove debris and other pollutants to prevent them from entering the water.

The proposed outlet is within the Commission's original permit jurisdiction, where the Commission has retained coastal permit authority. The drain line, which will redirect runoff from Basin D to Basin C, is located landward of the bulkhead and is within the County's coastal permit jurisdiction. Therefore, the drain line is not before the Commission and will require that the County issue a coastal development permit.

B. Public Access and Recreation

The proposed development, as submitted, does not interfere with public recreational use of coastal resources and conforms with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the promotion of public recreational opportunities.

C. Marine Resources

The proposed drain outlet will be occurring within coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters and for the use of on-going best management practices following construction. As conditioned, the

Commission finds that the development conforms with Sections 30230 and 32031 of the Coastal Act.

D. Fill of Coastal Waters and Loss of Marine Habitat

The proposed development has been designed to minimize the fill of coastal waters and adequate mitigation has been provided. The proposed development has been conditioned to minimize adverse effects on the marine environment by avoiding or mitigating impacts upon sensitive marine resources, such as eelgrass and to avoid contributing to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. As conditioned, there are no feasible less environmentally damaging alternatives available. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30224, 30230, 30231, and 30233 of the Coastal Act.

E. Visual Impacts

As proposed, the development is located within an existing developed area and is compatible with the character and scale of the surrounding area. Therefore, the Commission finds that the development conforms with Sections 30250 and 30251 of the Coastal Act.

F. Hazards

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Standard and Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. Local Coastal Program

The proposed development is located seaward of the mean high tide and is within the Commission's original permit jurisdiction. The standard of review for development within the Commission's original permit jurisdiction is Chapter 3 of the Coastal Act. The County's certified LCP is advisory in nature and may provide guidance for development. As stated in the preceding sections, as conditioned, the project will not adversely impact coastal and marine resources or coastal access. The Commission, therefore, finds that the proposed project, as conditioned, will be consistent with the Chapter 3 policies of the Coastal Act.

H. California Environmental Quality Act

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned

to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



LOS ANGELES AREA

SCALE 0 1 2 3 4 5 6 7 8 9 MILES

RECEIVED
South Coast Region
CALIFORNIA
COASTAL COMMISSION

HUNTINGTON BI

EXHIBIT NO. I
APPLICATION NO. 5-05-395
Region/Map
California Coastal Commission

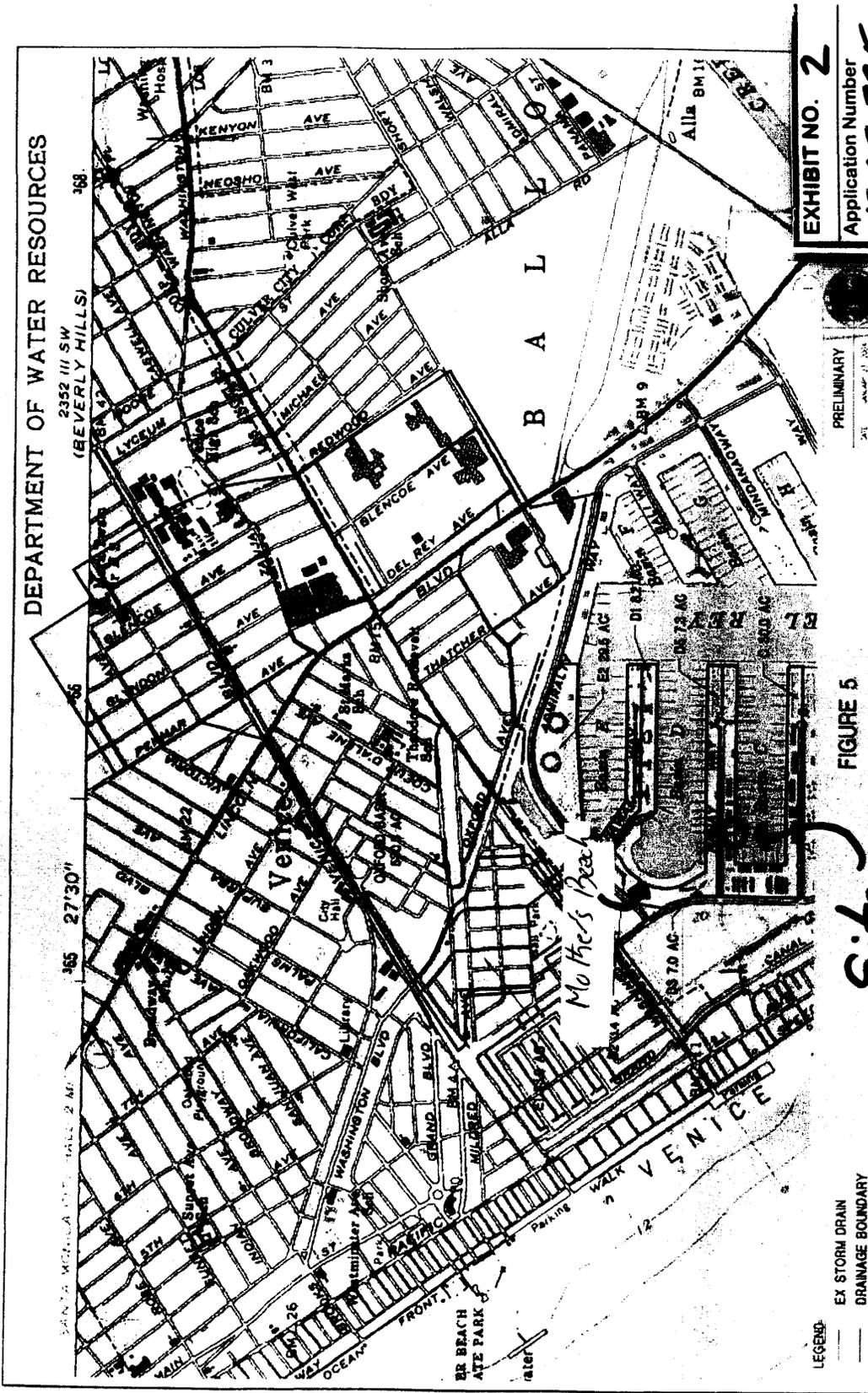


EXHIBIT NO. 2
Application Number
5-05-395
Vicinity Map
California Coastal Commission

PRELIMINARY
DATE: 1/1/70
BY: [Signature]

